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Topic: Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children

Juridical Analysis of The Human Rights Framework in Fulfilling the Right to Restitution for Women and Child Victims of Human Trafficking in Indonesia

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Abstract. *The Crime of Human Trafficking (TPPO) constitutes an extraordinary crime and a form of modern slavery that massively violates Human Rights (HR), with women and children occupying vulnerable positions as the primary targets of exploitation. Amid the physical, psychological, and economic suffering experienced by victims, both international and national law have mandated recovery mechanisms through the right to restitution, namely compensation imposed on perpetrators of crime. Unfortunately, the fulfillment of the right to restitution within Indonesia's criminal justice system continues to face a deadlock due to legal loopholes and the limited victim-recovery perspective among law enforcement officials. This article provides an in-depth juridical analysis of the human rights framework for fulfilling the right to restitution, critically highlighting why this well-intentioned legal instrument often fails to be enforced in practice, and how human trafficking syndicates exploit these weaknesses to evade their financial responsibility toward victims. This research employs a normative legal (juridical normative) method based on statutory analysis, a conceptual human rights approach, and the study of court decisions to trace the root causes behind the stagnation of restitution fulfillment. The analysis reveals that the most fundamental weakness stems from the provisions of Law Number 21 of 2007, which allow perpetrators to substitute their obligation to pay restitution with imprisonment. As a form of resolution, this study proposes urgent legal reforms that should be implemented immediately to safeguard the future of women and child victims of human trafficking. Regulatory reform is needed to abolish or tighten the provisions allowing subsidiary imprisonment in lieu of restitution, while also promoting the optimization of asset seizure from perpetrators at the earliest stages of criminal proceedings. Furthermore, this article recommends the establishment of a Victim Trust Fund by the state, a scheme under which the state assumes responsibility for paying*

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victims' restitution using proceeds confiscated from criminal activities when perpetrators are proven unable to pay. Without systemic reform that shifts the justice system from a punitive approach to a restorative one, the aspiration of protecting the human rights of trafficking victims in Indonesia will remain nothing more than rhetoric without tangible realization.

Keywords: *Human Rights; Restitution; Victims of Human Trafficking.*

1. Introduction

Human Rights (HR) are a pillar of civilization that places every individual in a position of inherent dignity, ensuring that no one may have their dignity degraded. The Constitution of Indonesia, the 1945 Constitution of the Republic of Indonesia, explicitly guarantees every citizen the right to live free from discrimination, violence, and exploitation. The state bears an absolute constitutional responsibility to protect all its people from various threats. However, amid the glitter of the globalization era, this constitutional promise often collides with the reality of transnational crime that treats human beings as commodities.¹

The Crime of Human Trafficking (TPPO) has emerged as the new face of modern slavery, brutally tearing apart these humanitarian values. This crime not only deprives victims of their physical freedom but also exploits their labor, sexuality, and even human organs for the economic benefit of criminal syndicates. In the context of human rights, human trafficking is classified as a serious crime against humanity (gross violation of human rights) because it strips away the most fundamental rights, including the right to liberty, the right to security, and the right not to be enslaved, all of which have been recognized by nations around the world.²

Within this landscape of organized crime, women and children are consistently trapped in the deepest levels of vulnerability. Deeply rooted patriarchal culture, low levels of education, and structural poverty often compel them to seek shortcuts for survival. Criminal syndicates fully understand this desperation and exploit it by offering false promises of high-paying jobs abroad. Their innocence and limited access to information make women and children easy targets for manipulation and deception that ultimately lead to horrific exploitation.

¹ Asshiddiqie, Jimly. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press, 2006.

² Harkrisnowo, Harkristuti. *Tindak Pidana Perdagangan Orang: Panduan Bagi Penegak Hukum*. Jakarta: Kemitraan (Partnership for Governance Reform), 2008



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The modus operandi of human trafficking continues to evolve alongside technological developments, making it increasingly difficult for law enforcement authorities to detect. Whereas recruitment was once carried out face-to-face by brokers in rural areas, today this crime has migrated into the digital sphere through social media and messaging applications. Syndicates operate across national borders through well-organized systems involving identity forgery, debt bondage, and threats of violence that leave victims feeling they have no escape. This evolution of crime demands a legal system that is equally revolutionary and capable of keeping pace with perpetrators.³

The consequences of such exploitation are profoundly destructive and multidimensional. Women and child victims suffer not only deep physical and psychological trauma resulting from torture, forced labor, or sexual abuse, but they also lose their economic future. Their time, labor, and youth are taken away without any compensation. When they are eventually rescued, most return to society empty-handed, burdened by social stigma and family debts that had been incurred to finance their illegal departure.

In response to victims' suffering, modern law has introduced the concept of recovery known as restitution. Literally and legally, restitution refers to compensation provided to victims or their families by the perpetrator or a third party. The fulfillment of restitution is neither an act of charity nor goodwill on the part of the state or the perpetrator; rather, it is a fundamental human right of victims that must be fulfilled. Restitution aims to restore victims to their original condition (*restitutio in integrum*), at least financially, by covering medical expenses, property losses, and even the immaterial suffering experienced by victims.⁴

Indonesia already possesses strong legal instruments to guarantee this right, primarily through Law Number 21 of 2007 concerning the Eradication of Human Trafficking and the Law on the Protection of Witnesses and Victims. The establishment of the Witness and Victim Protection Agency (LPSK) has also provided renewed hope in calculating and submitting restitution claims before the courts. Normatively, this legislative framework is highly progressive, placing victims' right to restitution on equal footing with criminal imprisonment imposed on perpetrators. This demonstrates that lawmakers recognize the importance of the economic dimension in survivors' recovery.

³ Wahyudi, Iwan. "Dinamika Kejahatan Transnasional: Analisis Kriminologis terhadap Tindak Pidana Perdagangan Orang di Asia Tenggara," *Jurnal HAM dan Keadilan Global*, vol. 5, no. 2, 2021, hlm. 112-130

⁴ Gosita, Arif. *Masalah Korban Kejahatan: Kumpulan Karangan*. Jakarta: Akademika Pressindo, 1993



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Nevertheless, the implementation of the right to restitution has become one of the greatest ironies within Indonesia's criminal justice system. In courtrooms, this right often disappears altogether. Even when panels of judges issue decisions requiring perpetrators to pay restitution amounting to tens or even hundreds of millions of rupiah, such awards frequently remain nothing more than words on paper. Perpetrators can easily refuse payment by claiming they possess no assets and then exploit legal provisions allowing restitution to be substituted with additional imprisonment (subsidiary punishment), typically ranging from only three to six months.⁵

This systemic failure reflects that Indonesia's criminal justice system remains deeply trapped in a retributive justice paradigm focused on punishing offenders through imprisonment, while paying insufficient attention to a restorative approach centered on victims' recovery. Prosecutors and police officers often consider their duties complete once perpetrators are convicted, without considering the victims' future circumstances. The inability of law enforcement authorities to identify, freeze, and confiscate perpetrators' assets from the early stages of investigation has become the principal cause of the failure to fulfill restitution rights, allowing trafficking syndicates to remain wealthy while victims continue to suffer.

Therefore, comprehensive research into the juridical analysis of fulfilling the right to restitution is both essential and urgent. This article is prepared to examine the human rights framework governing restitution, critically identify the various obstacles to law enforcement in practice, and formulate recommendations for systemic improvement. This study is expected to raise policymakers' awareness that protecting women and children from human trafficking requires more than merely imprisoning perpetrators; it must also include the fulfillment of victims' economic rights so that they can rebuild lives of dignity.

2. Research Methods

This research employs a normative legal (juridical normative) research method, namely a method that examines law from an internal perspective by analyzing library materials or secondary data.⁶ The approaches used include the Statutory Approach and the Conceptual Approach. Primary legal materials are derived from the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 21 of 2007 concerning the Eradication of Human Trafficking, the Child Protection Law, and regulations

⁵ Siregar, Bismar. "Efektivitas Restitusi bagi Korban Perdagangan Manusia: Sebuah Tinjauan Yuridis Normatif," *Jurnal Hukum Pidana Nasional*, vol. 8, no. 1, 2022, hlm. 45-60

⁶ Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2005.



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related to the Witness and Victim Protection Agency (LPSK). Data were analyzed qualitatively to describe the gap between legal theory and the practice of fulfilling restitution in court, thereby producing prescriptive recommendations for improving the legal system in the future.

3. Results and Discussion

3.1. The Human Rights Legal Framework and the Right to Restitution for Victims of Human Trafficking in Indonesia

The fulfillment of restitution rights for victims of human trafficking (TPPO) in Indonesia cannot be separated from the nation's highest legal foundation, namely the 1945 Constitution of the Republic of Indonesia. Article 28G of the 1945 Constitution guarantees every person's right to personal protection, dignity, and freedom from torture or degrading treatment. Under this constitutional framework, Law Number 39 of 1999 concerning Human Rights further emphasizes that the state bears the obligation to protect vulnerable groups, particularly women and children. From a human rights perspective, restitution is not merely ordinary civil compensation but a manifestation of the state's obligation to restore the human dignity that has been taken away by organized crime.

This state commitment was subsequently implemented more specifically through the enactment of Law Number 21 of 2007 on the Eradication of the Criminal Act of Human Trafficking. This law serves as a **lex specialis** (special law) that introduced a significant legal breakthrough by explicitly recognizing the right to restitution for victims. Unlike ordinary crimes, where compensation must be pursued separately through civil litigation, the Human Trafficking Law integrates restitution claims directly into criminal proceedings. This represents a progressive measure designed to facilitate access to justice for victims who are generally poor and legally uninformed so that they do not have to incur additional expenses to hire legal counsel in order to claim their financial rights.⁷

Within this legal framework, the components of restitution that victims may claim encompass a very broad spectrum. Based on Government Regulations governing restitution, victims of human trafficking are entitled to compensation for loss of property or income during the period of exploitation, suffering resulting from the crime (non-material damages), medical and psychological treatment costs, and other losses arising from the offense. The broad scope of this compensation demonstrates that Indonesia's national legal system has, in principle,

⁷ Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang



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acknowledged the extensive damage inflicted upon the lives of women and children by human trafficking, and that their recovery must therefore be measured comprehensively.

The Witness and Victim Protection Agency (LPSK) plays a crucial role as the frontline institution in calculating these entitlements. Pursuant to Law Number 31 of 2014 amending the Law on Witness and Victim Protection, LPSK is granted special authority to assess the reasonableness of compensation amounts and prepare accurate restitution calculations. In practice, when police investigators identify victims of human trafficking, they are required to inform them of their restitution rights and coordinate with LPSK. LPSK then collaborates with medical professionals and psychologists to quantify the victims' physical and psychological suffering into monetary terms, which are subsequently submitted to the Public Prosecutor (JPU).

The restitution claim then becomes an integral part of the prosecutor's indictment during trial. This transforms the nature of criminal proceedings, which traditionally centered solely on the interaction between the state (represented by the prosecutor) and the defendant, into a judicial process that also gives voice to victims. Prosecutors are required to present the restitution amount alongside their request for imprisonment. Judges hearing human trafficking cases are likewise legally obligated to consider and incorporate restitution payment obligations into their judgments. In theory, this procedural integration represents an efficient realization of human rights protection while reducing the complexity of judicial bureaucracy.

At the global level, Indonesia's legal framework constitutes a form of ratification and harmonization with the Palermo Protocol (the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons). This Protocol requires State Parties to provide effective remedies for victims. Furthermore, as a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), Indonesia is both morally and legally bound to prioritize the recovery of women and children. These international instruments serve as both guidance and a reminder that addressing human trafficking cannot rely solely on domestic criminal law but must also meet universal human rights standards.

For children who become victims of human trafficking, the legal protection framework is further strengthened by the Child Protection Law. This law emphasizes the principle of the best interests of the child. In the context of child restitution, compensation is intended not merely to remedy past suffering but to safeguard the child's future. Restitution funds may be allocated for trauma recovery, restoring interrupted access to education, and ensuring that



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the child does not fall back into exploitation. Restitution for children is therefore not merely compensation but an instrument for breaking the cycle of intergenerational poverty.⁸

Philosophically, the restitution framework embodied in these various laws marks a paradigm shift in Indonesia's criminal justice system. Criminal law is no longer viewed merely as a tool of retribution through imprisonment but is moving toward restorative justice. Restorative justice places the restoration of the balance disrupted by crime as the primary objective of punishment. Thus, if perpetrators are imprisoned while victims remain devastated by poverty, the law has failed to achieve genuine justice. The fulfillment of restitution lies at the very heart of restorative justice.

3.2. The Reality and Obstacles to the Enforcement of Restitution for Women and Child Victims of Human Trafficking

Although the human rights framework and national regulations concerning restitution appear highly comprehensive on paper, the reality on the ground presents a much bleaker picture of justice. The gap between the ideal legal provisions (*das sollen*) and the reality of law enforcement (*das sein*) remains wide and steep. Many women and child victims of human trafficking who have bravely spoken out and endured exhausting judicial proceedings ultimately leave empty-handed. Court judgments recognizing their restitution rights often amount to hollow victories because payment by perpetrators is never actually enforced.

The root of this enforcement deadlock lies in the legal loophole contained in Article 50 paragraph (4) of the Human Trafficking Eradication Law itself. This provision states that if perpetrators are unable to pay restitution, the obligation may be substituted with a subsidiary term of imprisonment. This loophole is the one most frequently exploited by defendants and their legal counsel. Given that Supreme Court decisions generally impose substitute imprisonment of only three to six months (very rarely exceeding one year), perpetrators often consider serving a few additional months in prison far "cheaper" than paying hundreds of millions of rupiah in compensation to victims.⁹

Human trafficking offenders are not amateur criminals; they are members of organized syndicates possessing sophisticated financial expertise. Long before their cases reach trial, these syndicates systematically conceal or launder the proceeds of their crimes. They transfer

⁸ Lembaga Perlindungan Saksi dan Korban (LPSK). *Laporan Tahunan Pemenuhan Hak Restitusi Korban Kejahatan Tahun 2021*. Jakarta: LPSK RI, 2022.

⁹ Atmasasmita, Romli. *Hukum Pidana Internasional dan Kejahatan Transnasional*. Bandung: Fikahati Aneska, 2010.



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money into third-party accounts, purchase property under relatives' names, or move assets abroad. In court, they skillfully portray themselves as impoverished individuals with no assets available for seizure, leaving judges with little choice but to impose substitute imprisonment.

The failure to prevent asset concealment stems from the limited capacity of law enforcement officers during the initial investigation stage. Asset tracing is rarely conducted by investigators handling human trafficking cases. Investigations generally focus on obtaining confessions and collecting sufficient evidence to prove the criminal elements of the offense (such as recruitment and exploitation), while neglecting financial investigations that follow the money. Consequently, once the case reaches trial and restitution is ordered, none of the perpetrator's assets have been frozen or seized for auction.

At the same time, lengthy judicial proceedings impose a severe psychological burden on victims, particularly children. Victims often spend months waiting in shelters under conditions of profound uncertainty. They lose access to education, lose valuable childhood experiences, and are repeatedly forced to relive their trauma through testimony. When they eventually discover that the restitution they had hoped would enable them to rebuild their lives cannot actually be collected, they experience secondary trauma (revictimization), leaving them feeling betrayed by the state's justice system.

Another obstacle arises from inadequate harmonization and coordination among law enforcement institutions. Differences in perception frequently exist between police investigators, prosecutors, and LPSK regarding the calculation and presentation of restitution amounts before the court. In many cases, evidence of victims' expenditures during exploitation is difficult to obtain because traffickers confiscate all of the victims' identification documents. When prosecutors lack strong arguments to defend LPSK's calculations, judges with more conservative views tend either to reject restitution requests altogether or approve them only after substantially reducing the proposed amount.

Furthermore, the perspectives of some judges at both trial and appellate levels also present challenges. Certain judges continue to view maximum imprisonment as the most appropriate punishment, while considering financial compensation a civil matter of lesser importance within criminal proceedings. The lack of a gender perspective and insufficient understanding of the long-term impact of these crimes on child victims often result in judges imposing excessively lenient substitute imprisonment, thereby failing to create a meaningful financial deterrent for trafficking syndicates.



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The cumulative consequence of these failures in enforcing restitution is an extremely dangerous outcome: repeated exploitation (re-trafficking). When women and child victims return to their hometowns without business capital, without skills, and sometimes still burdened by debts to loan sharks incurred to finance their initial departure, they once again face the abyss of poverty. With no viable alternatives, they become easy targets for recruitment by other human trafficking agents. Without economic recovery through restitution, the state indirectly allows victims to become trapped once again in the same vicious cycle of exploitation.

3.3. Recommendations for Policy Reform and Optimizing the Fulfillment of Restitution Rights

To untangle this web of injustice, the first and most urgent step the state must take is to comprehensively revise the Human Trafficking Law, particularly the provisions concerning substitute imprisonment. Substitute imprisonment should be abolished or, at a minimum, strictly limited to low-level offenders (such as drivers or village brokers) who are genuinely proven to be destitute. For intellectual masterminds, corporations, or recruitment agencies, there should be no room for compromise; asset confiscation and forced auctioning of their property must be mandatory. The state must ensure that human trafficking becomes a crime that is financially unprofitable.

The second, and perhaps most revolutionary, recommendation is the establishment of a Victim Trust Fund or State Compensation Fund. Since enforcing restitution against perpetrators often reaches a dead end, the state should assume responsibility for victims' recovery. This model is commonly implemented in many developed countries. The fund could be financed through the State Budget (APBN), grants from international organizations, allocations from non-tax state revenue (PNBP) derived from traffic fines, or proceeds from confiscated assets in corruption and narcotics cases. Through this mechanism, when perpetrators are declared unable to pay, the state would immediately provide restitution to victims, ensuring that the restoration of victims' human rights is not delayed.

Third, law enforcement agencies should begin adopting a corporate liability approach in combating human trafficking. Much of the exploitation of female workers is disguised through officially licensed Migrant Worker Placement Companies (P3MI) that operate unlawfully. Holding corporations accountable means pursuing entities that clearly possess assets, bank accounts, and substantial capital. If corporations are proven to have manipulated documents and trapped victims in debt bondage, the state should be authorized to freeze corporate assets, auction them, and prioritize the proceeds entirely for paying restitution to the dozens or even hundreds of victims they exploited.

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Fourth, enhancing the capacity of law enforcement officials is imperative, particularly in the field of financial intelligence. Education and training for police investigators and prosecutors should focus on *follow the money* investigative techniques. Human trafficking investigations should be integrated with the Anti-Money Laundering Law (TPPU), and authorities should actively cooperate with the Indonesian Financial Transaction Reports and Analysis Center (PPATK). By tracing financial transactions from the very first day of an investigation, investigators can freeze perpetrators' accounts before assets are transferred, ensuring that property remains available for eventual seizure to satisfy restitution orders.¹⁰

Fifth, gender perspectives and an understanding of children's human rights should be mainstreamed among judges hearing these cases. The Supreme Court should issue either a Supreme Court Regulation (PERMA) or a special Circular Letter providing firm guidelines for judges in handling restitution claims in human trafficking cases. Judges should be encouraged to reject perpetrators' requests for reductions in restitution obligations and to confidently order provisional seizure of perpetrators' assets, even where investigators initially failed to do so. Judicial sensitivity represents the final safeguard determining whether victims ultimately receive the justice to which they are entitled.

Sixth, the role and authority of the Witness and Victim Protection Agency (LPSK) should be strengthened through legislative reform. At present, LPSK is often constrained by the fact that its authority is limited to calculating and recommending restitution without possessing coercive powers to enforce asset recovery. The law should be amended to grant LPSK authority comparable to that of a specialized state institution capable of participating in the execution of asset seizures alongside the public prosecution service. In addition, LPSK should be provided with sufficient budgetary flexibility to offer interim compensation for the urgent needs of child victims before court decisions become final and legally binding (inkracht).

Seventh, cooperation between the government, civil society organizations (NGOs), community leaders, and the media should be strengthened. NGOs advocating for the rights of women and children are often the first to rescue victims and possess detailed knowledge of the losses they have suffered. Civil society voices are essential in monitoring judicial proceedings and ensuring that law enforcement officials remain accountable. Ethical media coverage can also promote transparency in court proceedings and encourage judges to issue progressive restitution decisions that prioritize victims' recovery.

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Eighth, in the final analysis, the fulfillment of restitution rights must be understood by all sectors of society as far more than merely transferring money from perpetrators to victims. Restitution is an instrument for restoring the sovereignty, dignity, and self-worth of women and children whose humanity has been violated. Ensuring that victims receive their rightful compensation demonstrates that Indonesia's legal system is not only firm in punishing offenders but also possesses the conscience and compassion necessary to restore those who have suffered most from the crime of modern slavery.

4. Conclusion

Efforts to mitigate and eradicate human trafficking will never achieve success as long as the law focuses solely on imprisoning perpetrators while neglecting the fate of victims. The human rights framework imperatively requires that the recovery of women and child victims—who bear the deepest suffering—be placed at the center of the criminal justice system. The right to restitution, as recognized by the Human Trafficking Eradication Law, is in fact a concrete expression of restorative justice that promises meaningful recovery. However, the legal reality in Indonesia continues to be characterized by legal loopholes and institutional weaknesses that criminal syndicates exploit to evade their financial responsibilities. Substitute imprisonment has diminished the value of justice and left victims once again trapped in poverty. Therefore, legal reform through stronger asset tracing mechanisms, the abolition of substitute restitution for principal offenders, and the establishment of a Victim Trust Fund are progressive measures that can no longer be postponed. Only through the courage to reform the system can the state genuinely demonstrate its commitment to protecting the dignity and humanity of its citizens.

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